

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KSQA, LLC)	Facility ID No. 166546
Licensee of Station KSQA)	NAL/Acct. No.: 201641420007
Topeka, Kansas)	FRN: 19020957

FORFEITURE ORDER

Adopted: June 16, 2016**Released: June 16, 2016**

By the Chief, Video Division, Media Bureau

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1),(2) of the Commission's rules (Rules),¹ we find that KSQA, LLC (Licensee), licensee of Station KSQA, Topeka, Kansas (KSQA or Station): (1) willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules² by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for fourteen quarters; and (2) willfully and/or repeatedly violated Section 73.3514(a) of the Rules³ by failing to report those late filings in its renewal application. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is liable for a monetary forfeiture in the amount of Fifteen Thousand Dollars (\$15,000).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability (NAL) for Forfeiture on April 7, 2016.⁴ The NAL notified the Licensee that (1) its failure to timely file the Station's Children's Television Programming Reports for fourteen quarters⁵ constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules and (2) its failure to report these violations in its renewal application⁶ constituted an apparent willful and/or repeated violation of Section 73.4514(a) of the Rules. The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of \$15,000.

3. In its Response submitted on April 21, 2016, the Licensee, through its counsel, admits it recognizes, under Commission precedent, that inadvertent failure to file a required form is not a defense to a finding of "willful and/or repeated" violation of the rule. Therefore, the Licensee asserts it does not

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1),(2).

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3514(a).

⁴ *KSQA, LLC*, Notice of Apparent Liability for Forfeiture, DA 16-373 (Vid. Div. 2016) (NAL).

⁵ The Licensee filed its quarterly Children's Television Programming Reports late for the fourth quarter of 2011, all four quarters of 2012, the second through fourth quarters of 2013, the first through third quarters of 2014, and the first and second quarters of 2015. NAL at n.6.

⁶ File No. BRCDT-20140129ACP.

propose to contest the NAL.⁷ Instead, it requests “the benefit of the red light waiver announced by the Commission” in its *Application Procedures Public Notice* relating to the Incentive Auction.⁸ The Licensee contends that while it did not owe money to the Commission when it filed to participate in the Auction and was therefore not subject to the red light rule at that time, the forfeiture it is now apparently liable for “could [make it] subject to the red light rule in the near future” because the Licensee is unable to pay it at this time. Thus, the Licensee requests that we defer any effort to collect the forfeiture until after the Incentive Auction ends.⁹ Consistent with its reading of the *Public Notice*, the Licensee specifically requests that we wait to collect the forfeiture from its proceeds if it is a winning bidder in the Auction. If it is not a winning bidder, the Licensee requests that we grant it an extension of time—specifically 30 days from the conclusion of the Auction—to submit a response demonstrating its inability to pay the proposed forfeiture.¹⁰

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission’s rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.¹² The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹³ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture in the amount of \$15,000 for its repeated and/or willful violations of Sections 73.3526(e)(11)(iii) and 73.4514(a) of the Rules.

5. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the rules establishes a base forfeiture amount of \$3,000 for failure to file a required form or information.¹⁴ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” In the NAL, the Division considered such factors and proposed a forfeiture amount of \$15,000.¹⁵

⁷ Licensee Response to Notice of Apparent Liability for Forfeiture at 2 (Apr. 21, 2016) (Licensee Response).

⁸ *Id.* at 2. See *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, Public Notice, 30 FCC Rcd 11034 (2015) (*Application Procedures Public Notice* or *Public Notice*).

⁹ Licensee Response at 3.

¹⁰ Licensee Response at 3.

¹¹ 47 U.S.C. § 503(b)(1),(A),(B); 47 C.F.R. § 1.80(a)(1),(2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator’s repeated violations of the Commission’s signal leakage rules). “Repeated” means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹³ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 C.F.R. § 1.80(b), note to para. (b)(8), Section I.

¹⁵ NAL at 3.

6. The Licensee does not dispute the substance of the NAL—that it failed to timely file with the Commission the Station’s Children’s Television Programming Reports for fourteen quarters and that it failed to report those violations in its license renewal application—nor does it ask for a reduction or cancellation of the forfeiture. Instead, the Licensee requests that we grant KSQA a waiver of the red light rule to allow it more time to pay the forfeiture or respond to it—depending on the results of the Incentive Auction. As explained below, we decline to grant the Licensee’s requests.

7. The Commission waived the red light rule for a limited purpose at the start of the Incentive Auction solely to allow broadcasters who owed debts to the Commission at the time they filed reverse auction applications to participate in the Auction.¹⁶ The Licensee acknowledges that KSQA did not owe money to the Commission at the time it filed to participate in the Auction, so it was not subject to the red light rule at that time, and therefore did not need the benefit of a waiver.¹⁷ Nonetheless, the Licensee requests a waiver now because it believes the assessed forfeiture, which it claims it is unable to pay, may cause the Station to become redlighted in the near future. The Licensee, however, is not subject to the red light rule at the current stage, and therefore does not need a waiver.¹⁸ Any need for a waiver is prospective and speculative at this time. Accordingly, we will not grant one.

8. The Licensee’s options upon receiving the NAL included (1) paying the full amount of the proposed forfeiture or (2) seeking a reduction or cancellation of the proposed forfeiture.¹⁹ The Licensee did neither in this case. While the Commission did require Incentive Auction applicants to acknowledge and certify that the Commission may recover all debt owed to it by an applicant from that applicant’s share of auction proceeds,²⁰ this acknowledgment did not relieve KSQA of its current responsibility to respond to the NAL in one of the above-mentioned ways.²¹ While the Licensee did file a response, the Response does not seek a reduction or a cancellation of the proposed forfeiture. It only asserts that the Licensee is “unable to pay the forfeiture at this time.”²² The Response fails to provide any documentation to support such a statement, as required by the NAL, and therefore has not demonstrated an inability to pay.²³ We therefore decline to defer our efforts to collect the forfeiture at this time. We also decline to

¹⁶ See *Application Procedures Public Notice*, 30 FCC Rcd at 11041, para. 12 (stating “we waive the red light rule for the limited purpose of permitting any eligible broadcast licensee that is red lighted for debt owed to the Commission at the time it submits a reverse auction application to participate in the reverse auction...”).

¹⁷ Licensee Response at 3.

¹⁸ See *FCC Announces Brief Delay in Enforcement of the Red Light Rule*, 19 FCC Rcd 19452, 19452 (2004) (stating that “anyone filing an application or seeking a benefit that is discovered to be delinquent in debt owed to the FCC will be notified of the delinquency and given 30 days to pay the debt in full or make other satisfactory arrangements. Failure to do so will result in dismissal of the application or other request for a benefit.”); but see also *Glenn A. Baxter Application to Renew License for Amateur Radio Service Station KIMAN*, Memorandum Opinion and Order, 2013 WL 5870097 (2013) (holding that “The Red Light Rule protects applicants that challenge delinquent debts from prematurely having their applications terminated...under Commission rules, Mr. Baxter’s debt could not be declared delinquent until the District Court proceeding and any further appeals had concluded.”). At the current time, KSQA has not been notified of any delinquency or found to be delinquent in debt owed to the Commission. Therefore the Licensee is not currently subject to the red light rule.

¹⁹ See NAL at 3, para. 8.

²⁰ *Application Procedures Public Notice*, 30 FCC Rcd at 11041.

²¹ See NAL at 3, para. 8 (ordering that “within thirty (30) days...KSQA, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.”).

²² Licensee Response at 3.

²³ The NAL clearly states that the Licensee “shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.” The NAL further states that “[t]he Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the

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grant the Licensee an extension of time to demonstrate an inability to pay if it is not successful in the Auction. If the Licensee is currently unable to pay as it says it is, it could have submitted evidence to support its position in its Response.

9. In light of the specific facts and circumstances before us, we find the Licensee's violations warrant the forfeiture proposed in the NAL. Accordingly, we find that the Licensee is liable in the amount of \$15,000 for its willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,²⁴ KSQA, LLC SHALL FORFEIT to the United States the sum of Fifteen Thousand Dollars (\$15,000) for its willful and/or repeated violation of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.²⁵

11. Payment of the forfeiture SHALL be made in the manner provided for in Section 1.80(h) of the Commission's rules within thirty (30) calendar days after the release date of this *Forfeiture Order*.²⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.²⁷

12. Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.²⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:²⁹

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. To complete the wire transfer and ensure

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respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted." NAL at 3-4.

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1),(2).

²⁵ 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

²⁶ 47 C.F.R. § 1.80(h).

²⁷ 47 U.S.C. § 504(a).

²⁸ Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require Licensees to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁹ For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at ARINQUIRIES@fcc.gov.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁰

14. IT IS FURTHER ORDERED THAT a copy of this *Forfeiture Order* shall be sent by Certified Mail Return Receipt Requested to KSQA, LLC, 800 SW Jackson Street, #1407, Topeka, Kansas 66612, and to its counsel, James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1201 Connecticut Avenue, NW, Suite 200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ See 47 C.F.R. § 1.1914.